

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

GLORIA NIEVES and EMILIO NIEVES,	§	
	§	
Plaintiffs,	§	C.A. Number:
	§	
v.	§	
	§	
ACME MARKETS, INC., a Delaware corporation	§	
d/b/a Acme Markets No. 7816, ACME MARKETS,	§	
INC., a Delaware Corporation d/b/a Acme Markets	§	
No. 7836, ACME MARKETS, INC., a Pennsylvania	§	
Corporation, d/b/a Acme Markets No. 7816,	§	
ACME MARKETS, INC., a Pennsylvania	§	
Corporation d/b/a Acme Markets No. 7836,	§	
	§	
Defendants.	§	

Trial by Jury Demanded

**COMPLAINT**

**I. NATURE OF THE ACTION**

1. This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and under statutory law, 19 Del.C. § 710, *et seq.* and state common law, all stemming from unlawful employment practices, harassment and hostile work environment of Acme Supermarkets, Inc.

**II. JURISDICTION AND VENUE**

2. The Court has original jurisdiction over this matter brought to redress deprivation of rights, privileges and immunities secured and protected by the laws of the United States pursuant to 28 U.S.C. §§ 1331 and 1334. The federal issues involved arise under Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et seq.*), 42 U.S.C. § 1981. The Court has supplemental jurisdiction over all state law claims as they are related to those over which original

jurisdiction is confirmed and are part of the same case at controversy, pursuant to 28 U.S.C. § 1967.

3. Venue in this Court is predicated upon the provision of 28 U.S.C. § 1391(b).

### III. PARTIES

4. Plaintiff, Gloria Nieves, is a resident of the State of Delaware residing at 625 Village Drive, Middletown, Delaware 19709. She is a Hispanic female who began to work for Defendant in or about November of 2001.

5. Plaintiff, Emilio Nieves, is the husband of Gloria Nieves who also resides at 625 Village Drive, Middletown, Delaware 19709.

6. Acme Markets, Inc. is a Delaware corporation (hereinafter "Acme") registered to do business in this state. Their registered agent for service of process is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. It operates various commercial supermarket establishments. The establishments subject to this action are Acme Market No. 7816 located at 460 East Main Street, Middletown, Delaware 19709 and Acme Market No. 7836 located at 236 E. Glenwood Avenue, Smyrna, Delaware 19977.

7. Acme Markets, Inc. is a Pennsylvania corporation registered to do business in this state. Their registered agent for service of process is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. It operates various commercial supermarket establishments. The establishments subject to this action are Acme Market No. 7816 located at 460 East Main Street, Middletown, Delaware 19709 and Acme Market No. 7836 located at 236 E. Glenwood Avenue, Smyrna, Delaware 19977.

#### IV. BACKGROUND

8. Plaintiff Gloria Nieves (hereinafter "Ms. Nieves") is a Hispanic female who began to work for the Acme Supermarkets located at 460 East Main Street, Middletown, Delaware in November of 2001.

9. On or about July 24, 2003, she began to be subjected to disparate treatment from her similarly situated non-Hispanic co-workers by being harassed and held up to ridicule because of her accent and race.

10. Her non-Hispanic co-workers made false accusations to her superiors alleging Ms. Nieves had violated employment rules and regulations.

11. This harassment and hostile environment created by Ms. Nieves co-workers continued even though she complained to management.

12. Co-workers, including Michelle Warren, Chrissie Show, Joyce Alphin and Denise made harassing and racially biased remarks, including telling supervisors that Ms. Nieves should not have been hired full time because she was Hispanic and spoke with an accent.

13. These same co-workers in the presence of other co-workers and customers on a number of occasions, up to and including February 2004, mocked Plaintiff's Hispanic accent.

14. These co-workers insisted Plaintiff Nieves speak only English at work even though Ms. Nieves believed it was part of her job to speak Spanish to non-English speaking customers.

15. Co-workers falsely accused her of throwing food and other violations of employment practices.

16. When Ms. Nieves reported these problems to her supervisors, at first nothing occurred, and then she was suspended from employment and transferred to another Acme store location.

17. Defendant Acme falsely claimed that she was suspended and transferred for a disciplinary infraction, while non-Hispanic employees who allegedly committed similar infractions were not disciplined.

18. In or about January 2005, Ms. Nieves, due to the continued harassment, hostile work environment and resulting emotional and physical stress, left her employment at Acme.

19. On or about April 2, 2004, Ms. Nieves filed a charge of discrimination with the Delaware Department of Labor (“DDOL”) and the Equal Employment Opportunity Commission (“EEOC”).

20. On March 31, 2005, the DDOL issued a Reasonable Cause Determination finding Ms. Nieves’ allegations that co-workers constantly harassed her and subjected her to physical threats and name calling because of her race and national origin had been confirmed, and further finding that when Ms. Nieves complained, no action was taken to end this behavior. This Final Determination and Delaware Right to Sue Notice was reviewed by the EEOC.

21. The EEOC issued a “Right to Sue” Notice dated November 30, 2005 in which the EEOC adopted the findings of the DDOL.

**COUNT I**  
**(Hostile Environment/Constructive Discharge)**

22. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 21.

23. The disparate treatment and hostile environment and harassment to which Plaintiff was subjected due to her race and national origin constitute violation of her employment rights protected under Title VII (42 U.S.C. § 2000(e)).

24. The unlawful employment practices set forth herein were allowed and endorsed by management level personnel of Defendant Acme.

25. Due to the hostile working conditions, Ms. Nieves left her employment at Acme in January 2005. This constructive discharge of her employment constitutes a violation of her rights predicated by Title VII (42 U.S.C. § 2000(e)) and 42 U.S.C. § 1981.

26. The unlawful employment practices set forth herein were done with malice and/or reckless indifference to Plaintiff's federally protected rights.

27. The unlawful employment practices were a proximate cause of Plaintiff suffering severe and continuing mental, physical and emotional distress, loss of pay and other benefits associated with her employment entitling her to remedies and damages including, but not limited to compensatory, equitable and punitive damages as set forth below.

**COUNT II**  
**(Retaliation)**

28. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 27.

29. The disparate treatment to which Plaintiff was subjected due to her complaints of hostile work environment, and her suspension from employment in retaliation for her complaints of disparate treatment have deprived Plaintiff of equal employment opportunities and otherwise adversely affected her status as an employee, all in retaliation for her engaging in activities protected under Title VII (42 U.S.C. § 2000(e)).

30. The constructive termination of Ms. Nieves' employment due to her complaints of racial discrimination constitutes a violation of her rights protected by Title VII (42 U.S.C. § 2000(e)) and 42 U.S.C. § 1981.

31. These unlawful employment practices of Defendant Acme were intentional, were done with malice and/or a reckless indifference to Plaintiff's federally protected rights.

32. The unlawful employment practices were a proximate cause of Plaintiff's suffering, past, present and future loss of income, including, but not limited to loss of wages, medical insurance and other benefits associated with her employment. Such actions were also a proximate cause of Plaintiff suffering severe and continuing mental, physical and emotional distress entitling Plaintiff to remedies and damages, including, but not limited to compensatory, equitable and punitive damages as set forth below.

**COUNT III**  
**(Statutory State Law Claim)**

33. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 32.

34. The disparate treatment and hostile environment and harassment to which Plaintiff was subjected due to her race and national origin constitute violation of her employment rights protected under 19 Del.C. §710, et seq.

35. The unlawful employment practices set forth herein were allowed and endorsed by management level personnel of Defendant Acme.

36. Due to the hostile working conditions, Ms. Nieves left her employment with Acme in January 2003. This constructive discharge of her employment constitutes a violation of her rights protected by 19 Del.C. § 701, et seq.

37. The unlawful employment practices set forth herein were done with malice and/or reckless indifference to Plaintiff's rights.

38. The unlawful employment practices were a proximate cause of Plaintiff suffering severe and continuing mental and emotional distress, loss of pay and other benefits associated with her employment entitling her to remedies and damages including, but not limited to compensatory, equitable and punitive damages as set forth below.

**COUNT IV**  
**(Retaliation – Statutory State Law Statute Claim)**

39. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 38.

40. The disparate treatment to which Plaintiff was subjected due to her complaints of hostile work environment, and her suspension from employment in retaliation for her complaints of disparate treatment have deprived Plaintiff of equal employment opportunities and otherwise adversely affected her status as an employee, all in retaliation for her engaging in activities protected under 19 Del.C., § 710 *et seq.*

41. The constructive termination of Ms. Nieves' employment due to her complaints of racial discrimination constitutes a violation of rights protected by 19 Del.C., § 710 *et seq.*

42. These unlawful employment practices of Defendant Acme were intentional, were done with malice and/or a reckless indifference to Plaintiff's protected rights.

43. The unlawful employment practices were a proximate cause of Plaintiff's suffering, past, present and future loss of income, including, but not limited to loss of wages, medical insurance and other benefits associated with her employment. Such actions were also a proximate cause of Plaintiff suffering severe and continuing mental and emotional distress

entitling Plaintiff to remedies and damages, including, but not limited to compensatory, equitable and punitive damages as set forth below.

**COUNT V**  
**(State Law Claim - Wrongful Termination)**

44. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 43.

45. Part of Plaintiff's employment contract with Defendant includes a Covenant of Good Faith and Fair Dealing.

46. The Defendant's constructive discharge of Plaintiff's employment which was caused by Defendant's failure to address the harassment of Plaintiff and her hostile work environment is a violation of the public policy of the State of Delaware.

47. The Defendant's constructive termination of Plaintiff's employment in violation of the public policy of the State of Delaware violates the Covenant of Good Faith and Fair Dealing and constitutes a wrongful discharge of Plaintiff in violation of her contractual rights.

48. The constructive discharge of Plaintiff in violation of the Covenant of Good Faith and Fair Dealing were a proximate cause of Plaintiff's suffering, *inter alia*, past, present and future loss of income, including, but not limited to, loss of wages, medical insurance, pension benefits, and other benefits associated with her employment.

**COUNT VI**  
**(State law claim – Intentional Infliction of Emotional Distress)**

49. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 48.

50. Defendant, through its management personnel, intentionally allowed Plaintiff's co-workers to criticize her, threaten her and falsely accuse her of misconduct.

51. Defendant's actions, through its management personnel, were intentional and malicious and calculated to cause Defendant to suffer extreme emotional distress.

52. The actions of Defendant, through its management and supervisory personnel, in suspending Plaintiff and transferring her to a different location based upon unsupported claims of Plaintiff's misconduct were intentionally designed to cause Plaintiff to suffer extreme emotional distress.

53. The actions of Defendant caused Plaintiff to suffer severe and continuing mental and emotional distress and physical manifestation of that distress entitling her to remedies and damages, including, but not limited to, compensatory, equitable and punitive damages as set forth below.

**COUNT VII**  
**(Plaintiff Emilio Nieves' Claim for Loss of Consortium)**

54. Plaintiffs adopt and incorporate by reference the allegations in paragraphs 1 through 53.

55. Plaintiff Emilio Nieves at all times pertinent was the lawful husband of Plaintiff Gloria Nieves.

56. The actions of Defendant which caused Plaintiff Ms. Nieves to suffer emotional distress and physical manifestations of that distress, caused Plaintiff Emilio Nieves to lose the consortium, comfort and companionship of his wife, entitling him to compensatory damages.

WHEREFORE, Plaintiffs demand judgment against Defendant as follows:

1. For past, present and future lost wages and other benefits Plaintiff, Ms. Nieves, lost through the constructive termination of her employment with Defendant Acme;
2. Equitable relief, including, but not limited to, Ms. Nieves' future loss of income and benefits in lieu of reinstatement of employment;
3. Punitive damages;
4. Compensation for Ms. Nieves' emotional, mental, physical and psychological damage and injury including medical expenses;
5. Compensation for Mr. Nieves' loss of consortium;
6. An award of attorney's fees;
7. An award of costs;
8. An award of pre and post judgment interest; and
9. For any other relief the Court deems just and appropriate.

**BIGGS AND BATTAGLIA**

/s/ Philip B. Bartoshesky (#2056)  
Philip B. Bartoshesky, Esquire  
Victor F. Battaglia, Esquire (#156)  
921 Orange Street  
P.O. Box 1489  
Wilmington DE 19899-1489  
(302) 655-9677  
[Pbarto@batlaw.com](mailto:Pbarto@batlaw.com)  
[VictorSr@batlaw.com](mailto:VictorSr@batlaw.com)  
Attorneys for Plaintiffs

Date: February 27, 2006

06 - 123

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Gloria Nieves and Emilio Nieves

(b) County of Residence of First Listed Plaintiff New Castle  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Victor F. Battaglia, Sr., Esquire  
Biggs and Battaglia, 921 N. Orange St., Wilmington

DEFENDANTS - Acme Markets, Inc. d/b/a Acme Markets No. 7816; Acme Markets, Inc., d/b/a Acme Markets No. 7836

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 510 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other Fraud	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 415 Voting	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Housing/ Accommodations	<input type="checkbox"/> 515 Habeas Corpus:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Welfare	<input type="checkbox"/> 520 General	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 525 Death Penalty		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
---	---	--	---	--	---	--

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**Title VII (42 U.S.C. §2000(e); 42 U.S.C. §1981)**

## VI. CAUSE OF ACTION

Brief description of cause:

Hostile work environment and constructive discharge due to race/national

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:  
**JURY DEMAND:  Yes  No** **origin.**

## VIII. RELATED CASE(S) IF ANY

Nieves v. Acme Supermarkets - pro se filing

(See instructions):

JUDGE **Street**DOCKET NUMBER **05-646 GMS**

DATE

26/10/06

FOR OFFICE USE ONLY

RECEIPT # **AMOUNT** **APPLYING IFP** **JUDGE** **MAG. JUDGE**

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

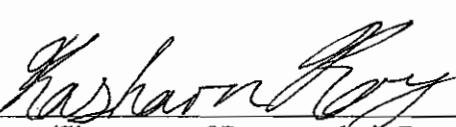
Civil Action No. 06-123

**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

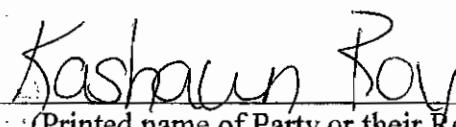
**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 2 COPIES OF AO FORM 85.

FEB 27 2006  
(Date forms issued)



(Signature of Party or their Representative)



(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action